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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/730,933

12/10/2003

Allan Grainger

3003-1088-1

7168

466

7590

08/23/2006

YOUNG & THOMPSON  
745 SOUTH 23RD STREET  
2ND FLOOR  
ARLINGTON, VA 22202

EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/730,933	<b>Applicant(s)</b> GRAINGER, ALLAN	
	<b>Examiner</b> Jennifer E. Novosad	<b>Art Unit</b> 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-25 and 28-30 is/are pending in the application.
- 4a) Of the above claim(s) 12-24, 29 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 25 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 3634

### **DETAILED ACTION**

This final Office action is in response to the amendment filed July 11, 2006 by which claims 1-11, 25, and 28 were amended, claims 26 and 27 were canceled, and claims **29** and 30 were added.

#### ***Election/Restriction***

Newly submitted claims **29** and 30 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claim **29** requires uprights and plural bays, i.e., claims 1-25 and 28 do not require these features.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims **29** and 30 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claims 12-24 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on March 21, 2006. It is noted that previously withdrawn claims **26** and 27, i.e., drawn to a non-elected invention, have been canceled in the amendment filed July 11, 2006.

#### ***Priority***

*As previously set forth*, acknowledgment is made of applicant's claim for foreign priority based on an application filed in United Kingdom on December 10, 2003. It is noted, however,

Art Unit: 3634

that applicant has not filed a certified copy of the British application as required by 35

U.S.C. 119(b).

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

*As previously set forth*, the recitation "the path" lacks proper antecedent basis in each of claims 4-8.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 6 recites the broad recitation gate

Art Unit: 3634

members (see line 3), and the claim also recites a pair of gate members which is the narrower statement of the range/limitation.

Claim 7 is rendered indefinite by the recitation "an entire support height" (see the last line) since no support has been properly set forth, the structural relationship of the elements is unclear.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11, 25, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,095,861 (Kachidurian '861).

Kachidurian '861 disclose an apparatus comprising two parallel opposed substantially horizontal rails (70) spaced and receiving a pallet (80) therebetween; members (90, 110) *adapted to engage* (i.e., element 90 can engage the top surface of 80 which faces upwards in Figure 3 or element 90 can engage the front surface of 80 which faces leftwards in Figure 3 - since the claim does not positively require that the members "engage" the pallet, a reference need only be capable of doing so and thus the members of Kachidurian '861 are considered to meet this limitation) an upper surface of the pallet whereby the members (90, 110) are connected (i.e., 90, 100 are hinged to the housing at 20, 30 which are connected to the rails 70 and thus the members are considered to be connected to the rails via elements 20 and 30) to the rails (70); a stop (60

Art Unit: 3634

and 40) adjacent one of the rails (70) near a rear end of the apparatus remote from the loading end (front left side of the perspective view of Figure 1); *with respect to claims 2-4*, the stop (60 and 40) includes an elongate plate (40) having a substantially vertical portion and a transverse portion (60) perpendicular to the vertical portion and extending towards the loading end (right rear towards left front in Figure 1) whereby the width (i.e., the width of the stop is taken between top and bottom surfaces of 60 and the width of the rail is taken between the top and bottom surfaces of the horizontal portion of 70) of the stop (60, 40) is approximately equal to the width of the pallet (80); *with respect to claims 4-8*, the apparatus including at least one gate member (120 on both sides of Figure 1) located near the loading end (left front side of Figure 1) and being movable between a locking position (see Figure 3) where it protrudes into the path of the pallet near the loading end and a release position (see Figure 1); whereby *with respect to claim 5*, the gate member is clear of the path whereby the gate is movable by a pivot (123); whereby *with respect to claim 6*, the gate member includes an angle bracket (121, 122) having a second portion substantially perpendicular to a first position; whereby *with respect to claim 7*, the gate member extends *substantially* along the height of the apparatus; whereby *with respect to claim 8*, the gate member is fitted with a locking mechanism (124); *with respect to claims 9-11 and 28*, the member can be moved to a locking position about a pivot (unnumbered - see column 1, line 31, i.e., hinged to the housing); *with respect to claim 10*, the member includes an arm including a clamp (90) that *can be adjusted* to contact an upper surface of the pallet; and *with respect to claim 11*, the member (90, 110) is located parallel (i.e., the surface of 90, 100 is parallel to the front surface of the rails 70), to the rails (70).

***Response to Arguments***

Applicant's arguments with respect to claims 1-11, 25, and 28 have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection were necessitated by the amendment reciting "connected to the rails" in line 9 of claim 1.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

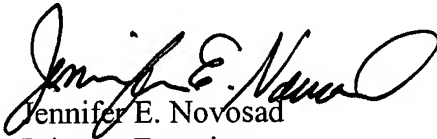
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

Art Unit: 3634

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Jennifer E. Novosad  
Primary Examiner  
Art Unit 3634

August 21, 2006